

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re TASHA A., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B162996
(Super. Ct. No. JV38690)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

WENDY P.,

Defendant and Appellant.

Wendy P. appeals a judgment of the juvenile court declaring that her daughter is adoptable and terminating her parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)¹ We affirm.

FACTS

On October 31, 2001, the San Luis Obispo County Department of Social Services ("DSS") filed a petition on behalf of nine-year-old Tasha A. DSS

¹ All statutory references are to the Welfare and Institutions Code.

alleged that the child's mother, Wendy P., suffers from mental illness and substance abuse and has failed to protect Tasha. (§ 300, subd. (b).) The petition stated that Wendy P. had arrests for alcohol-related offenses, including child endangerment, and had delayed reporting that her boyfriend molested Tasha. Tasha also observed domestic violence against her mother and expressed fear of living with her.

DSS alleged that Wendy P.'s alcohol consumption interfered with her psychotropic medications. Although Wendy P. entered a residential alcohol treatment program on two occasions, she left prior to completion.

The juvenile court ordered Tasha detained. DSS placed her in the care of her paternal grandparents.

On November 30, 2001, DSS filed a supplemental petition alleging that Tasha's physical and emotional health suffered from her mother's conflicts with her in-laws. (§ 300, subd. (c).) DSS stated that the relationship between Wendy P. and Tasha's paternal grandmother was one of long-standing animosity and ill will. Tasha's pediatrician attributed Tasha's physical symptoms to emotional stress.

Based in part upon psychological evaluations of Wendy P., DSS recommended that reunification services be denied. DSS pointed out that Wendy P. suffers from a mental disability, has an extensive history of abusive and chronic use of drugs and alcohol, and has resisted treatment. (§ 361.5, subds. (b)(2) & former (b)(12), now (b)(13).)

After a hearing, the juvenile court sustained the allegations of the dependency petitions and denied reunification services to Wendy P. (§ 300, subds. (b) & (c).) The court then set the matter for a section 366.26 permanent plan hearing. By petition for extraordinary writ, Wendy P. challenged the order. We concluded that substantial evidence supports the order denying reunification services and we denied the petition. (*Wendy P. v. Superior Court of San Luis Obispo County* (June 10, 2002, B156432) [nonpub. opn.])

On May 23, 2002, Tasha's paternal grandparents sought standing as de

facto parents. (Cal. Rules of Court, rule 1401 (a)(8).) They stated that they were "ready, willing and able" to adopt Tasha. The juvenile court granted their petition over Wendy P.'s objections. We affirmed the order. (*San Luis Obispo County Department of Social Services v. Wendy P.* (April 29, 2003, B161205) [nonpub. opn].)

Through mediation, the paternal grandparents and Tasha's father agreed to a post-adoption visitation schedule. Wendy P. refused to participate in the mediation.

At the section 366.26 permanent plan hearing, the juvenile court received evidence of DSS reports, a bonding evaluation prepared by Doctor William Alvarez, a report of the court-appointed special advocate for Tasha, and testimony from two social workers.

Doctor Alvarez evaluated the bond between Tasha and Wendy P. He described the relationship as "troubled" and not emotionally supportive to Tasha. Tasha expressed anger toward Wendy P. and described her as unreliable and intoxicated during visits. Doctor Alvarez concluded that Tasha was a "parentified child" who loved her mother but who wanted to be adopted by her grandparents.

The court-appointed special advocate stated that Tasha desired to be adopted by her paternal grandparents but wanted to continue visiting with her parents. The advocate concluded that "Tasha's grandparents have provided a stable and loving home environment that makes her feel secure."

DSS provided evidence that approximately three weeks prior to the hearing, San Luis Obispo police officers arrested Wendy P. for being under the influence of methamphetamine. After her arrest, Wendy P. admitted use of methamphetamine.

DSS evaluated the paternal grandparents as adoptive parents and concluded that it is in Tasha's best interests that they adopt her. DSS noted: "[Tasha] has clearly stated that she wants to be adopted by her grandparents and longs for her

case to come to an end."

Social worker Gail Gordon testified and opined that Tasha was adoptable. Gordon stated that Tasha was "a special needs child" due to the substance abuse of her parents. She testified that "all of our children have . . . special needs and they are adopted. [Tasha's needs] are not of . . . such a severe extent that she wouldn't be a very good candidate for adoption[.]"

Wendy P. did not appear at the section 366.26 hearing. Her attorney stated that Wendy P. was recovering from emergency dental surgery and he requested a continuance. After the parties' unsuccessful attempts to confirm Wendy P.'s emergency, the trial court denied a continuance.

The juvenile court concluded by clear and convincing evidence that Tasha was adoptable and it terminated Wendy P.'s parental rights.²

Wendy P. appeals and contends that 1) insufficient evidence supports the finding that Tasha is adoptable, and 2) the juvenile court abused its discretion by terminating her parental rights.

DISCUSSION

I.

Wendy P. argues that insufficient evidence exists that Tasha is likely to be adopted. (§ 366.26, subd. (c)(1) [court shall terminate parental rights if "it is likely the child will be adopted"]; *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649 ["adoptability" concerns whether a minor's age, physical condition, and emotional state make it difficult to find an adoptive home].) Wendy P. points to evidence that Tasha has physical and emotional symptoms caused by stress, suffers from post-traumatic stress disorder, has difficulty with academics, particularly math, and is an older child. (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1204-1206 [likelihood that child will be adopted must rest upon clear and convincing evidence that he is

² The juvenile court also terminated the parental rights of Tasha's father. He does not appeal the decision.

generally adoptable].)

To terminate parental rights and order adoption, the trial court must find by clear and convincing evidence that “it is likely the child will be adopted.” (§ 366.26, subd. (c)(1); *In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523.) Our appellate review is limited to whether the findings of the juvenile court rest upon sufficient evidence. (*In re Jeremy S.*, *supra*, 89 Cal.App.4th 514, 523.)

Here clear and convincing evidence supports the finding that Tasha is generally adoptable. Tasha is described as “a very active, social and athletic child” whose “developmental milestones are on target.” Doctor Alvarez described Tasha as “a very bright and articulate child.” Social worker Gordon opined that Tasha’s post-traumatic stress disorder is “very treatable” and that she is “generally adoptable.” Tasha was making progress in school and improving her study habits. Her paternal grandparents as well as her maternal grandparents expressed willingness to adopt her. (*In re Sarah M.*, *supra*, 22 Cal.App.4th 1642, 1649-1650 [a prospective adoptive parent’s willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time].) Tasha’s physical stress-related symptoms are also diminishing in part due to visitation away from Wendy P.’s home. The finding of the juvenile court rests upon sufficient evidence.

II.

Wendy P. asserts that the juvenile court abused its discretion by terminating her parental rights. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351-1352 [abuse of discretion standard of review concerning application of § 366.26, subd. (c)(1)(A) to termination of parental rights]; *contra*, *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947, 955 [sufficiency of evidence standard of review concerning exception of § 366.26, subd. (c)(1)].) She asserts that the “parental relationship” exception of section 366.26, subdivision (c)(1)(A), precludes termination of her parental rights. (*Ibid.* [“The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the

relationship."].) Wendy P. points out that Tasha lived nine years in her custody, Tasha desired unsupervised visitation with her, and Tasha's paternal grandmother may frustrate or preclude future visits. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467-468 [discussion of factors to consider in determining whether parental relationship exception of § 366.26, subd. (c)(1)(A) proven].)

Section 366.26, subdivision (c)(1), requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless "the court finds a compelling reason for determining that termination would be detrimental to the child" due to an enumerated statutory exception. The parental relationship exception of section 366.26, subdivision (c)(1)(A), requires a showing of "regular visitation and contact" and benefit to the child from "continuing the relationship." (*In re Angel B.*, *supra*, 97 Cal.App.4th 454, 466.) The parent bears the burden of proving the exception. (*Ibid.*) Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs "after the court has repeatedly found the parent unable to meet the child's needs." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.)

The exception requires proof of "a parental relationship," not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.) A biological parent who has not reunited with a child may not derail an adoption by showing that the child derives some benefit from continuing the relationship. (*In re Angel B.*, *supra*, 97 Cal.App.4th 454, 466.)

The juvenile court acted properly by terminating Wendy P.'s parental rights because she did not establish that her relationship with Tasha satisfies Tasha's "need for a parent." (*In re Jasmine D.*, *supra*, 79 Cal.App.4th 1339, 1350.) Doctor Alvarez opined that Tasha is a "parentified" child who is angry with her mother because the mother is unreliable and not emotionally supportive. Social worker Gordon observed Tasha's visits with Wendy P. and noted that Tasha is angry and

hostile to her mother at times. Doctor Alvarez also noted that Tasha was not affectionate toward Wendy P. In a monitored telephone conversation, Tasha had expressed anger at Wendy P. for contesting the adoption. Tasha stated then that she did not wish to live with her mother again.

Moreover, several weeks prior to the permanent plan hearing, police officers arrested Wendy P. for being under the influence of methamphetamine. This evidence also supports the reasonable inference that Wendy P. is unable to function as a parent to Tasha.

The juvenile court assessed the credibility of the witnesses, weighed the evidence, and determined that Wendy P. had not fulfilled a parental role. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1351 ["The juvenile court's opportunity to observe the witnesses and generally get 'the feel of the case' warrants a high degree of . . . deference."].) Wendy P. did not establish this was "an extraordinary case" where the parental relationship exception of section 366.26, subdivision (c)(1)(A) applies. (*Id.*, at p. 1350.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

Sidney B. Findley, Commissioner
Superior Court County of San Luis Obispo

Maureen L. Keaney, under appointment by the Court of Appeal, for
Defendant and Appellant.

James B. Lindholm, Jr. County Counsel, Leslie H. Kraut, Deputy
County Counsel, for Plaintiff and Respondent.